



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUN - 9 2015

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Arthur Thomas  
General Manager  
POET Biorefining - Fostoria  
2111 Sandusky Street  
Fostoria, Ohio 44830

Dear Mr. Thomas:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves case docket no. **CAA-05-2015-0032**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on June 9, 2015.

Pursuant to paragraph 40 of the CAFO, POET Biorefining – Fostoria must pay the civil penalty within 30 days of the effective date of the CAFO. Your check must display the docket number **CAA-05-2015-0032**.

Please direct any questions regarding this case to Mr. Tom Williams at (312)-886-0814.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan Frank".

Nathan Frank  
Chief  
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J  
Regional Hearing Clerk/E-19J  
Tom Williams/C-14J  
Mark Budge, Ohio Environmental Protection Agency  
Robert Hodanbosi, Ohio Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



In the Matter of:	)	Docket No. CAA-05-2015-0032
	)	
Fostoria Ethanol, LLC, d/b/a	)	Proceeding to Assess a Civil Penalty
POET Biorefining - Fostoria	)	Under Section 113(d) of the Clean Air Act
Fostoria, Ohio	)	42 U.S.C. § 7413(d)
	)	
Respondent.	)	
_____	)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Fostoria Ethanol, LLC, doing business as POET Biorefining - Fostoria (POET), a corporation doing business in Ohio. Respondent owns and operates a facility located at 2111 Sandusky Street, Fostoria, Ohio 44830 (the Facility).
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations or legal conclusions in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

**Applicable Statutory and Regulatory Background**

9. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$295,000 for violations that occurred from January 12, 2009, through December 6, 2013, and may assess a civil penalty of up to \$320,000 for violations occurring after December 6, 2013, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

10. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

11. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

### Ohio Permit Program

12. On March 10, 2003, EPA approved Ohio Administrative Code (OAC) Rule 3745-31-05 as part of the federally enforceable Ohio State Implementation Plan (Ohio SIP). 68 Fed. Reg. 2909.

13. OAC Rule 3745-31-05 authorizes the Ohio Environmental Protection Agency (Ohio EPA) to issue federally enforceable Permits-to-Install (PTI) and Permits-to-Install and Operate (PTIO) with terms and conditions as necessary to ensure compliance with applicable laws and to ensure adequate protection of environmental quality.

### Title V Permit Program

14. Title V of the Act, 42 U.S.C. §§ 7661-7661f, established an operating permit program for major sources of air pollution.

15. In accordance with Section 502(b) of the Act, 42 U.S.C. § 7661a(b), the EPA promulgated regulations establishing the minimum elements of a Title V permit program for any air pollution control agency to administer. See 57 Fed. Reg. 32295 (July 21, 1992). Those regulations are codified at 40 C.F.R. Part 70.

16. Section 502(d) of the Act, 42 U.S.C. § 7661a(d), provides that each state must submit to the EPA a permit program meeting the requirements of Title V.

17. On August 15, 1995, EPA approved the State of Ohio Title V operating permit program with an effective date of October 1, 1995. 60 Fed. Reg. 42045.

18. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the Act, no source subject to Title V may operate except in compliance with a Title V permit.

19. 40 C.F.R. § 70.6(b)(1) provides that EPA may enforce all terms and conditions in a Title V permit.

#### POET PTI and PTIO Requirements

20. Ohio EPA issued a PTI, Application No. 03-17304, to the Facility on September 18, 2007, with an effective date of September 18, 2007 (2007 PTI).

21. Emission Unit P007 (P007) Condition A.2.a.i. of the 2007 PTI requires the operation of a wet scrubber with a minimum control efficiency of 95% for volatile organic compounds (VOCs) at P007.

22. Ohio EPA issued a PTIO, No. P0105649, to the Facility on September 20, 2010, with an effective date of September 20, 2010 (2010 PTIO).

23. Condition 2.b)(2)a.i. of the 2010 PTIO requires the operation of a wet scrubber with a minimum control efficiency of 95% for VOCs at P007.

24. Ohio EPA issued a PTIO, No. P010758, to the Facility on June 29, 2011, with an effective date of June 29, 2011 (2011 PTIO).

25. Condition 3.c)(1)a. of the 2011 PTIO requires the operation of a wet scrubber with a minimum control efficiency of 95% for VOCs at P007.

26. Ohio EPA issued a PTIO, No. P0109395, to the Facility on June 19, 2012, with an effective date of June 19, 2012 (2012 PTIO).

27. Condition 1.b)(1)a. of the 2012 PTIO states that VOC emissions from P007 during downtime of the scrubber shall not exceed 600.00 lbs/hr.

#### Title V Permit Requirements

28. Ohio EPA issued a Title V Permit, No. P0110375, to the Facility on December 17, 2012, with an effective date of January 7, 2013 (Title V Permit).

29. Condition 4.b)(1)a. of the Title V Permit states that VOC emissions from P007 during downtime of the scrubber shall not exceed 600.00 lbs/hr.

**Factual Allegations and Alleged Violations**

30. POET owns and operates an ethanol production plant located at 2111 Sandusky Street, Fostoria, Ohio (the Facility).

31. The Facility describes P007 as “ethanol production operations,” which include a slurry tank, five fermenters, a yeast prop tank, a beer well, a beer stripper, a rectifier column, a side stripper, molecular sieves, evaporators, and centrifuges.

32. A scrubber and regenerative thermal oxidizer (RTO) in series control emissions from P007.

33. Emissions from P007 that bypass the scrubber are not routed to the RTO.

34. Periods of downtime at the scrubber resulted in emissions from P007 being directly vented to the atmosphere, in violation of P007 Condition A.2.a.i. of the 2007 PTI, P007 Condition 2.b)(2)a.i. of the 2010 PTIO, and P007 Condition 3.c)(1)(a) of the 2011 PTIO.

35. In November 2011, POET conducted a performance test at the scrubber (2011 Performance Test) which identified a VOC loading rate to the scrubber of 554.55 pounds VOC (as propane) per hour. Compliance with total VOC emission limits requires conversion of VOC “as propane” emission data through use of the conversion factors of 1.22 pounds of propane per pound of carbon and 1.92 pounds of VOC (assumed to be ethanol) per pound of carbon. Applying these conversion factors to the VOC loading rate of 554.55 pounds VOC (as propane) per hour results in an actual VOC loading rate of 871 pounds total VOCs per hour. The VOC loading rate at the scrubber is the VOC emission rate from P007 during periods of scrubber downtime.

36. VOC emissions from P007 exceeded 600 lbs/hr during periods of scrubber downtime from June 19, 2012, through January 6, 2013 in violation of Condition 1.b)(1)a. of the 2012 PTIO, and from January 7, 2013, through the present in violation of Condition 4.b)(1)a. of the Title V Permit.

37. On November 12, 2014, EPA issued the Respondent a Notice of Violation and Finding of Violation (NOV/FOV) alleging that it violated provisions of its PTI, PTIOs, and Title V Permit as described in Paragraphs 34 and 36, above.

38. On December 2, 2014, representatives of the Respondent and EPA discussed the November 12, 2014 NOV/FOV.

#### **Civil Penalty**

39. Based on analysis of the factors specified in Section 113(c) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and the Respondent's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$120,000.

40. Within 30 days after the effective date of this CAFO, Respondent must pay a \$120,000 civil penalty by: sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

Or, for checks sent by express mail (non-U.S. Postal Service will not deliver mail to P.O. Boxes), sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must note Respondent's name and the docket number of this CAFO.

41. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to Tom Williams at the following addresses when it pays the penalty:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Tom M. Williams (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

42. This civil penalty is not deductible for federal tax purposes.

43. If Respondent does not timely pay the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.



44. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

#### **General Provisions**

45. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

46. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

47. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state and local laws. Except as provided in Paragraph 46, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

48. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

49. The terms of this CAFO bind Respondent, its successors and assigns.

50. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

51. Each party agrees to bear its own costs and attorney's fees in this action.

52. This CAFO constitutes the entire agreement between the parties.

**POET Biorefining – Fostoria, Respondent**

5.19.15  
Date

Arthur Thomas  
Arthur Thomas  
General Manager  
POET Biorefining – Fostoria

**United States Environmental Protection Agency, Complainant**

6/2/15  
Date


George T. Czerniak  
George T. Czerniak  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency  
Region 5

**Consent Agreement and Final Order**  
**In the Matter of: POET Biorefining - Fostoria**  
**Docket No. CAA-05-2015-0032**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

4 June 2015  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

Consent Agreement and Final Order  
In the Matter of: POET Biorefining - Fostoria  
Docket No: **CAA-05-2015-0032**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2015-0032, which was filed on June 9, 2015, this day in the following manner to the following addressees:

Copy by (Certified Mail  
Return-Receipt Requested  
or E-mail):

Arthur Thomas  
POET Biorefining – Fostoria  
2111 Sandusky Street  
Fostoria, Ohio 44830

Copy by E-mail to  
Attorney for Complainant:

Tom Williams, Attorney  
williams.tom@epa.gov

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated:

June 9, 2015

  
\_\_\_\_\_  
LaDawn Whitehead *Andrew Anderson for*  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 5373